

Amendment No. 1 to HB1751

Fitzhugh
Signature of Sponsor

AMEND Senate Bill No. 516*

House Bill No. 1751

By deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 55-24-103, is amended by adding the following as a new, appropriately designated subsection:

() Funds held by a manufacturer or manufacturer's distributor which are necessary to perform the manufacturer's or manufacturer's distributor obligations to consumers under the provisions of this section are trust funds held in trust by the manufacturer or manufacturer's distributor for the benefit of any consumer who is entitled to the protections and rights afforded under this section.

SECTION 2. Tennessee Code Annotated, Title 55, is amended by adding the following language as a new chapter thereto:

Chapter 27. Funds held in Trust by Dealers, Distributors, and Manufacturers.

Section 55-27-101. Chapter definitions. The definitions in chapter 17 of this title shall also apply to those defined terms used in this chapter.

Section 55-27-102. Funds held in trust by a dealer. All funds received by a dealer in a transaction involving the purchase and/or trade-in of a motor vehicle intended by the parties to the transaction to be used to:

(1) Satisfy obligations secured by a lien or other security interest in a motor vehicle or other tangible personal property taken by the dealer as a trade-in in partial or complete consideration for the purchase of a motor vehicle;

(2) Pay to the taxing authorities the sales or use tax collected by

the dealer on the sale of a motor vehicle; or

(3) Pay the fees imposed for the transfer of title, registration, and licensing of the vehicle;

are trust funds held in trust by the dealer for the benefit of the purchaser and/or the holder of the obligations secured by the lien or other security interest and/or the taxing authorities and registration officials, as their respective interests may appear.

Section 55-27-103. Funds held in trust by a manufacturer. Funds held by a manufacturer which are necessary to perform the obligations of the manufacturer to dealers or customers hereinafter described are trust funds held in trust by the manufacturer for the benefit of any dealer or customer to whom such obligation is owed:

(1) Dealer holdbacks which are funds owed to a dealer by the manufacturer pursuant to an agreement between the parties calculated as a percentage of the manufacturer's suggested retail price of a vehicle sold by the manufacturer to the dealer, which accrue at the time the dealer sells the motor vehicle to a customer at retail and are to be paid to the dealer in monthly, quarterly, or other installments.

(2) Interest credits which are funds which become owed by a manufacturer to a dealer in an amount or percentage agreed upon by the parties at the time the dealer takes delivery of a motor vehicle purchased by the dealer from the manufacturer which are intended to pay the dealer a portion of the interest or other carrying charges incurred by the dealer in financing or floor planning its inventory of new motor vehicles.

(3) Marketing stimulus credits which are funds the manufacturer has agreed to pay to the dealer based upon a percentage of the manufacturer's invoices for certain model years of motor vehicles sold to

the dealer by the manufacturer which become payable upon the dealer taking delivery of the vehicles in accordance with the terms of the agreement between the parties.

(4) Customer rebates which are funds in an amount which a manufacturer determines and agrees to extend to customers who purchase certain motor vehicles and which become due and payable by the manufacturer at the time the customer purchases a qualifying motor vehicle, whether the right to receipt of the rebate is retained by the customer or assigned to the dealer by the customer at the time the sale of the vehicle takes place.

(5) Dealer cash rebates including concessions which are such amounts of money which a manufacturer has agreed to pay to a dealer which become due at the time of sale of a vehicle and payable to the dealer according to the terms of the agreement of the parties.

(6) Credit card rewards which are amounts of money that the holder of a credit card sponsored by a manufacturer can accrue and accumulate which can be used by the holder as partial payment for the purchase from a dealer of a new motor vehicle made by the manufacturer or an affiliate of the manufacturer, and which the holder becomes entitled to use by the purchase of such vehicle and has been assigned to the dealer by the holder or by operation of law or contract.

(7) Advertising funds which are amounts charged by the manufacturer to a dealer as a percentage of the invoice price of a motor vehicle sold by the manufacturer to the dealer which are intended to be held by the manufacturer for the benefit of the dealer and used to reimburse the dealer for advertising expenses incurred by the dealer which meet the requirements imposed by the agreement between the

manufacturer and the dealer.

(8) Employee or supplier discounts which are the amounts which a manufacturer has agreed to pay to a dealer as additional consideration for the sale of a motor vehicle computed as either a fixed amount or percentage of the sales price of a motor vehicle sold by the dealer under a manufacturer's employees and suppliers plan and which become due to the dealer at the time of sale of a vehicle to such employee or supplier pursuant to the manufacturer's plan, and which become payable to the dealer in accordance with the terms of the plan or other agreement between the manufacturer and the dealer.

(9) Employee buyout vouchers which are contractual arrangements under which a manufacturer provides to an employee upon termination or as a bonus a voucher in a predetermined amount which the employee is entitled to use as a means of payment or partial payment for a new motor vehicle manufactured by the manufacturer or an affiliate of the manufacturer, and which a dealer has become entitled to be paid at the time of its acceptance from the employee by the dealer upon sale of a qualifying motor vehicle.

(10) Warranty payments which are payments which a manufacturer becomes obligated to pay to a dealer or other repair facility for the cost of parts, labor, and associated taxes and other charges incurred in performing repairs or other services to a motor vehicle covered by a vehicle warranty extended or provided by the manufacturer with respect to such motor vehicle which become due at the time such parts, repairs, or services are provided, and are payable under the terms of the warranty or other agreement.

Section 55-27-104. Funds held in trust by a distributor. Funds held by a

manufacturer's distributor of motor vehicles which are described in one (1) or more of subdivisions (1) through (10) of § 55-27-103, as to which the distributor is obligated to a dealer or customer, are trust funds held in trust by the manufacturer's distributor for the benefit of any dealer or customer to whom such obligation is owed.

Section 55-27-105. Status of funds. The trust fund status of any funds provided for under this chapter and chapter 24 of this title shall not be defeated by an inability to identify and trace the existence of the specific, precise funds in the account or accounts of the party holding such funds.

Section 55-27-106. Security interest in funds. A party holding trust funds provided for under this chapter and chapter 24 of this title may not grant to any third party any security or other interest in such trust funds.

SECTION 3.

(a) The provisions of this act are declaratory of existing law in the State of Tennessee and merely codify the existing policies concerning the subject.

(b) If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application, and to that end all provisions of this act are declared to be severable.

SECTION 4. This act shall take effect upon becoming a law, the public welfare requiring it.